

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

TIMOTHY V. LEPESH,

CV. 09-1456-SU

Petitioner,

FINDINGS AND RECOMMENDATION

v.

RICK COURSEY

Respondent.

SULLIVAN, Magistrate Judge.

Petitioner in this 28 U.S.C. § 2254 habeas corpus action was required to file his supporting memorandum on January 31, 2011, but he did not do so. As a result, on April 14, 2011, the court advised petitioner that the arguments in the State's Response appeared to be well-taken, and also ordered petitioner to show cause why his case should not be dismissed for the reasons set forth in the Response. The court explicitly advised petitioner that his failure to show cause within 30 days would result in the dismissal of his case with prejudice.

Petitioner has not responded to the court's Order to Show Cause in any way. Because petitioner has neither complied with the court's Order to Show Cause, nor attempted to sustain his burden of proof as required by *Silva v. Woodford*, 279 F.3d 825, 835 (9th Cir. 2002), the Petition for Writ of Habeas Corpus [1] should be dismissed with prejudice. In addition, the court should decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

DATED this 17th day of May, 2011.

/s/ Patricia Sullivan  
Patricia Sullivan  
United States Magistrate Judge